IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 632 of 2003.

Judgement reserved on: 17.5.2007

Date of decision: 21.5.2007.

Oriental Insurance Company Ltd. ….. Appellant.

Vs.

Smt. Urmila Devi and ors. …. Respondents.

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Deepak Bhasin, Advocate.

For the Respondents : Mr. Suneet Goel, Advocate, for respondents No. 1 and 2.

Kuldip Singh, Judge.

This appeal has been filed by Insurance Company against the award, dated 18.10.2003, passed by Motor Accident Claims Tribunal (II), Una, in MAC Petition No. 42/02/96, awarding Rs. 1,58,200/- compensation alongwith interest at the rate of 9% per annum, from the date of petition i.e. 8.4.1996 to be paid by respondents No.1 and 2, jointly and severally, who would be indemnified by respondent No.3. The parties are referred in the same manner, as in the impugned award.

2. Brief facts, as pleaded are that Sanjiv Kumar alias Rajiv Singh, age 19 years, was working with respondent No.1, as a

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Whether the reporters of the local papers may be allowed to see the Judgment?

cleaner on truck No. HR-29C-5914 on 15.9.1995, which was bound from Delhi to Bombay. The truck met with an accident, as respondent No.2 driver of the truck lost control and truck turned turtle resulting in the death of Sanjiv alias Rajiv Singh on the spot. The accident has taken place due to rash and negligent driving of respondent No.2. An FIR was lodged at Police Station, Sirinagar, District Ajmer and the post mortem was also conducted at Sirinagar on 16.9.1995. The deceased was earning Rs. 1350/- per month, besides Rs. 50/- per day, as station allowance. The petitioners have thus claimed Rs. 5,00,000/- compensation. Respondent No.3 is the insurer. Respondent No.1 was the owner of the truck at the time of accident.

3. Respondent No.1 has not contested the petition and was proceeded ex-parte. Respondent No.2 contested the petition by filing reply and he has taken preliminary objection of maintainability. On merits, he has denied that accident took place due to rash and negligent driving on his part. He took the plea that left “Kamani” of the truck got broken suddenly, which led to the accident. The insurance company contested the petition and took several objections. It has been alleged that the vehicle was being used in contravention of Motor Vehicles Act, against the terms of the policy. The jurisdiction of the Tribunal to try the petition was also denied.

4. It has been alleged that respondent No.2 driver was not holding a valid and effective driving licence at the time of the accident. In brief, the insurer denied its liability to pay any compensation. The Tribunal allowed the petition, as noticed above. Respondent No.3, insurance company has thus filed the appeal.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the insurance company has made submissions on issue No.4 regarding valid and effective driving licence of the driver at the time of the accident. He has urged that owner of the truck has not contested the petition. She has not appeared in the witness box. It has not been proved that owner before engaging respondent No.2, as driver on the truck bonafide enquired about the validity of driving licence of respondent No.2. According to the learned counsel, it has been proved that driving licence of respondent No. 2 was fake, and, therefore, insurance company is not liable to pay any compensation.

7. Learned counsel for the petitioners- claimants supported the impugned award. The controversy involved in the appeal is very short. The defences available to the insurance company are to be proved by the insurance company. The onus of issue No.4, regarding the validity and effectiveness of the driving licence of respondent No.2, at the time of the accident, was on the insurance company. In the present case, the insurance company has not discharged its initial onus and, therefore, the absence of contest by respondent No.1 of the petition makes no difference.

8. In **United India Insurance Co. Ltd. vs. Lehru and others** [2003 (3) SCC 338], the Hon'ble Supreme Court in para-20 of the judgement has held, as under:-

> "When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of

> it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia, Sohan Lal Passi and Kamla cases. We are in full agreement with the view expressed therein and see no reason to take a different view. "

9. The Hon'ble Supreme Court in case of fake driving licence has held that unless it is proved by insurance company that the owner of the vehicle prior to engaging the driver was aware of the fake licence, the insurance company is still liable to pay compensation arising out of an accident caused by the holder of such driving licence. In the present case, there is no whisper in the reply of the insurance company that the owner of the truck was aware that the

driving licence of respondent was fake when he was engaged by her for driving the truck. In the evidence led by respondent, it has not been proved that owner was aware of the validity and effectiveness of the driving licence, when she engaged respondent No.2 for driving the truck. The insurance company has miserably failed to discharge the onus. To be more precise, it is not the case of the insurance company in the reply and in the evidence that the owner before engaging respondent No.2, as driver, was aware that driving licence of respondent No. 2 was fake. In absence of such plea and proof, the insurance company cannot escape the liability. The Tribunal has relied mark-A, certified copy of licence issued by the Copying Agency of District and Sessions Judge, Ajmer as well as Ex. RW1/A driving licence of respondent No.2. The driving licence Ex. RW 1/A and mark-A are similar. This licence is renewed from 9.3.1993 to 8.3.1996 and was valid for driving heavy motor vehicles. The accident took place on 15.9.1995. In presence of mark-A and Ex. RW 1/A, it is difficult to assume that owner respondent No.1 should not have employed respondent No.2 driver to drive the truck. An ordinary person like respondent No.1 without any basis would not dispute the authenticity and validity of licence Ex. RW1/A and she had no reason not to act upon Ex. RW1/A. In these circumstances, it can be safely assumed that respondent No. 2 was possessed of valid driving licence to drive the truck when he was engaged by respondent No.1 owner. The Tribunal has rightly appreciated the evidence on record and has rightly returned the finding on issue No.4 against the

insurance company. The learned counsel for the insurance company has failed to make out any case for interference.

10. In view of above discussion, the appeal is dismissed. The impugned award is upheld. No costs.

May 21, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**